DOCUMENT RESUME

ED 425 557 EC 306 219

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TITLE People with Mental Retardation in the Criminal Justice System. ARC Q&A #101-47.
INSTITUTION Arc, Arlington, TX.
PUB DATE 1995-10-00
NOTE 4p.
AVAILABLE FROM Arc National Headquarters, 500 E. Border St., S-300, Arlington, TX 76010; Tel:: 817-261-6003; TDD: 817-277-0553.
PUB TYPE Guides - Non-Classroom (055)
EDRS PRICE EDRS Price MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS Capital Punishment; Civil Rights; Compliance (Legal); *Crime; Criminals; *Criminology; *Incidence; *Mental Retardation; Punishment; Victims of Crime

ABSTRACT

This fact sheet uses a question-and-answer format to summarize issues related to people with mental retardation in the criminal justice system. Questions and answers address the following topics: the number of people with mental retardation in the criminal justice system (2 to 10 percent of the prison population is mentally retarded); whether people with mental retardation actually commit crimes more often than other people; the types of crimes people with mental retardation are commonly charged with (misdemeanors and less serious felonies); disadvantages faced by people with mental retardation in the criminal justice system (such as pretending to understand when they do not); the death penalty and people with mental retardation (many major organizations urge abolishing the death penalty for people with this disability); people with mental retardation are more frequent victims of crime; and ways to protect the rights of someone with mental retardation. (Contains 15 references.) (DB)

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ARC Q&A #101-47

The Arc
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Q&A

People with Mental Retardation in the Criminal Justice System

by Leigh Ann Reynolds

How many people with mental retardation are in the criminal justice system?

Based on the 1990 census, an estimated 6.2 to 7.5 million people in the United States have mental retardation. Various studies have suggested between 2 and 10 percent of the prison population have mental retardation. Denkowski & Denkowski (1985) found that about 2 percent of all inmates in either state or federal prisons have mental retardation (about 14,000 people). Another study conducted by the state of New York found similar results: 1.8 to 2.2 percent of the prison population are people with developmental disabilities (Sundram, 1990). Residential programs that house offenders with mental retardation support another 12,500 people who have been convicted, or suspected of, committing a crime (Noble & Conley, 1992).

The total number of people with mental retardation in prisons and residential programs (26,500 to 32,500) underestimates the extent of the problem since the number of those who are on probation, in local jails or placed in programs for people with mental illness remains unknown. While those in the criminal justice system constitute a small portion of all people with this disability, the number is significant enough to warrant the attention and concern of self-advocates, parents, criminal justice personnel and policy-makers.

Do people with mental retardation commit crimes more often than people without this disability?

Some people with mental retardation may commit crimes, not because they have below-average intelligence, but because of their unique personal experiences, environmental influences and individual differences. During the early 1900s, mental retardation professionals believed that individuals with mental retardation were predisposed to becoming a criminal due to their disability. This "alarmist" view lost support during the 1930s as its leaders rescinded their original beliefs. By the 1950s, and since that time, any findings suggesting a significant link between mental retardation and criminal behavior have been proven incorrect and, consequently, rejected (Ellis & Luckasson, 1985).

What crimes are people with mental retardation usually charged with committing?

The misconception that people with mental retardation usually commit serious crimes is unwarranted. Data taken from state and federal prisons reveal that people with mental retardation are more likely to commit serious felonies, but this information is misleading, since prisons typically house inmates who commit serious crimes (Brown & Courtless, 1971).

Data gathered from a specialized community program for offenders with mental retardation found that most offenders were arrested for committing misdemeanors and other less serious felonies (White & Wood, 1986). Similar research in Illinois also found that people with mental retardation commit less serious crimes, such as misdemeanors and public disturbances (Illinois Mentally Retarded and Mentally Ill Task Force, 1988).

What disadvantages do people with mental retardation face in the criminal justice system?

As more people with mental retardation move out of institutions and into the community, their susceptibility to becoming involved in the criminal justice system as a victim, witness or suspect of a crime may increase dramatically. Individuals with this disability are frequently used by other criminals to assist in law-breaking activities without understanding their involvement in a crime or the consequences of their involvement. They may also have a deep need to be accepted and may agree to help with criminal activities in order to gain friendship. Many individuals unintentionally give "misunderstood responses" to officers, which increases their vulnerability to arrest, incarceration and possibly execution, even if they committed no crime (Perske, 1991). Some common responses from those with mental retardation that may effect their ability to protect their rights during police contact include the following. The person may:

- not want disability to be recognized (and try to cover it up).
- not understand rights (but pretend to understand).
- not understand commands.
- be overwhelmed by police presence.
- act upset at being detained and/or try to run away.
- say what he or she thinks others want to hear.
- have difficulty describing facts or details of offense.
- be the last to leave the scene of the crime and the first to get caught.
- be confused about who is responsible for the crime and "confess" even though innocent.

Upon arrest, individuals with mental retardation usually answer affirmatively when asked if they understand their rights, even when they do not understand, in order to gain approval or to hide their disability.

Law enforcement officers often receive little or no training in the area of mental retardation and have difficulty recognizing a person who has this disability. They may be mistaken as someone who is drunk, on drugs or who has mental illness. Court officials face the same dilemma. Attorneys may represent people with mental retardation without realizing a disability exists and judges may impose sentences without taking mental retardation into account.

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Considering such extreme disadvantages, it is not surprising that people with mental retardation are more likely to be arrested, convicted, sentenced to prison and victimized in prison (Santamour, 1986). Once in the criminal justice system, these individuals are less likely to receive probation or parole and tend to serve longer sentences due to an inability to understand or adapt to prison rules.

Should the death penalty be allowed for people with mental retardation?

Most people agree that capital punishment of people with mental retardation should be prohibited. Some states have already passed laws which abolish the death penalty for people with this disability. The Arc adopted an official position statement in 1992 titled *Access to Justice and Fair Treatment Under the Criminal Law for People with Mental Retardation* which advocates for the prohibition of the death penalty for people with mental retardation. The Arc, along with AAMR, the American Psychological Association and eight other organizations, supported and signed the amicus curiae brief in Penry v. Lynaugh which supports the abolition of the death penalty for people with mental retardation.

These organizations and experts on mental retardation agree that regardless of how mild the degree of mental retardation, the death penalty can never be a justifiable method of punishment for individuals with this disability. However, the U.S. Supreme Court maintains that the execution of people with this disability is not considered "cruel and unusual punishment" according to the Eighth Amendment of the U.S. Constitution. Therefore, the U.S. Congress and states can choose to impose the death penalty (Penry v. Lynaugh, 1989).

Do people with mental retardation become victims of crime more often than those without a disability?

Some researchers have found that people with disabilities are about twice as likely as others to be victimized (Sobsey & Doe, 1991). Crimes committed against people with mental retardation are often labeled as abuse and neglect which understates the criminal victimization problem. Factors such as impaired cognitive abilities and judgment, physical disabilities, insufficient adaptive behaviors, constant interactions with "protectors" who exploit them, lack of knowledge on how to protect themselves and living and working in high-risk environments increase the vulnerability of people with mental retardation to victimization (Luckasson, 1992).

Many victims with mental retardation may not report crimes because of their dependency on the abuser for basic survival needs. When victims do report crimes, police and court officials may not take the person's allegations seriously or be reluctant to get involved. Additionally, people with mental retardation often lack the resources necessary to prosecute (Sobsey, 1994).

What can I do to help protect my own rights or the rights of someone with mental retardation?

Education and training is paramount if individuals with mental retardation are going to receive equal justice. Children and adolescents with mental retardation must learn about the possibility of meeting a police officer and how to protect their rights during encounters with police. Contact your school's special education department and local chapter of The Arc to promote the use of such training if it is currently unavailable.

Police officers should be familiar with and understand this disability. Contact your local police department and ask for the training officer or police chief. Determine if mental retardation is included in their training. If not, advocate for the teaching of mental retardation as a separate module (apart from mental illness) so officers will not confuse the two disabilities (Norley, 1976). Encourage your local chapter of The Arc to provide training on mental retardation for police officers.

Educating court officials can begin by contacting the court liaison and requesting a meeting with the judge. Ask the judge what training on mental retardation is available to court personnel in your county and, if there is none, request the use of such training.

Building alliances among chapters of The Arc, the police departments and the courts prepares the community for situations involving people with mental retardation who come in contact with the criminal justice system. Such preparation enables the criminal justice system in your community to ensure that the rights of people with mental retardation are protected.

Contact The Arc for more information on this topic and to obtain a list of The Arc's publications relating to criminal justice issues.

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